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IN THE

Supreme Court of the United States

October Term, 1967

No. 761

INTERNATIONAL ATLAS SERVICES, INC., a Division of ATLAS CORPORATION, formerly known as INTERNATIONAL AIRCRAFT SERVICES, INC., a Delaware Corporation, *Petitioner,*

vs.

TWENTIETH CENTURY AIRCRAFT COMPANY, a partnership; J. B. LEWIN, S. WEISS, R. R. HART and J. FISCHGRUND, individually and as partners doing business as TWENTIETH CENTURY AIRCRAFT COMPANY,

Respondents.

Petition for a Writ of Certiorari to the Court of Appeal for the Second Appellate District of the State of California.

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Petitioner,

vs.

TWENTIETH CENTURY AIRCRAFT COMPANY, a partnership; J. B. LEWIN, S. WEISS, R. R. HART and J. FISCHGRUND, individually and as partners doing business as TWENTIETH CENTURY AIRCRAFT COMPANY,

Respondents.

Petition for a Writ of Certiorari to the Court of Appeal for the Second Appellate District of the State of California.

Petitioner International Atlas Services, Inc., prays that a writ of certiorari issue to review the decision of the District Court of Appeal, Second Appellate District, State or California, filed in the above-entitled case on May 31, 1967. On November 27, 1964, the Superior Court of the State of California, for the County of Los Angeles, entered judgment in favor of respondents and against petitioner herein [14].[1] Said judgment was confirmed on appeal to the District Court

[1]Unless otherwise indicated numbers in brackets refer to pages in the Clerk's Transcript.

of Appeal for the Second Appellate District, State of California, in an opinion filed on May 31, 1967 (Petition for Rehearing, denied).

A petition for hearing was filed with the Supreme Court of the State of California and the Court denied the petition without opinion by order filed July 26, 1967 (see order of Supreme Court, State of California, dated July 26, 1967, filed herein).

Citations to Opinion Below.

The opinion filed on May 31, 1967, by the District Court of Appeal, Second Appellate District, State of California, is reported in 251 A.C.A. 495. A copy of said opinion is attached to this petition as Appendix A. An opinion was not filed by the Supreme Court of the State of California in support of its order dated July 26, 1967, denying petitioner's request for hearing.

Jurisdiction.

The decision of the District Court was filed and entered on May 31, 1967. A petition for rehearing was denied without opinion on June 27, 1967 (see order of District Court of Appeal, Second Appellate District, State of California, dated June 27, 1967, filed herein). Petitioner's Petition For Hearing to the Supreme Court of the State of California was denied on July 26, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 [3].

Questions Presented.

The trial of this case and the opening, answering, and reply briefs filed thereafter in the District Court of Appeal involved the application of California's law of accession. Although 49 U.S.S. §1403 was men-

tioned in respondents' answering brief in connection with the question of notice (Resp. Br. pp. 15-22), the cause proceeded under California law until oral argument before the District Court of Appeal. During oral argument the District Court raised the problem concerning the effect of 49 U.S.C. §1403 on petitioner's position. The parties thereafter submitted supplemental briefs at the District Court's request.

A second oral argument was held on February 9, 1967, and was concerned primarily with the interpretation and effect of said federal statute. The District Court of Appeal filed its opinion on May 31, 1967. After an analysis of California law, the Court stated:

> "It would appear, then, that under California law Atlas at a minimum should recover the value of its engines and at a maximum should recover the engines themselves. Nevertheless, we have concluded that California law does not apply to this case, that the controversy is governed by the laws of the United States, and that under federal law Twentieth Century must prevail."[2]

The Court continued, holding that respondents must prevail in petitioner's claim and delivery action since petitioner had not recorded its interest in the property subject to the action pursuant to the provisions of 49 U.S.C. §1403.

As indicated, the District Court would have reversed the trial court's judgment and ruled for petitioner, but for its interpretation of 49 U.S.C. §1403. Two questions are presented in this petition:

1. Does 49 U.S.C. §1403 preempt state law and demand that the serial numbers of aircraft engines,

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[2]251 A.C.A. at 499; see Appendix A at p. 5.

which are placed on a given aircraft pursuant to a maintenance contract with the aircraft's registered owner, be recorded as provided in said section in order to protect the engine owner's interest against subsequent action by the conditional vendor of the aircraft?

2. Assuming *arguendo* that engines placed on an aircraft pursuant to a maintenance contract are within the scope of 49 U.S.C. §1403, does said section automatically invalidate the interest of the owner of the engines under the facts of the present case when said interest is not recorded pursuant to 49 U.S.C. §1403?

Statute Involved.

The statutory provision involved is Title 49, Section 1403 of the United States Code. It is reproduced in Appendix B.

Statement of the Case.

On April 8, 1961, respondents, as owners, sold aircraft No. N-90771 to President Airlines on a conditional sales contract for the sum of $525,000.00 [106]. Prior to said sales respondents knew that President Airlines would contract for the maintenance of the aircraft and that the aircraft's engines would be interchanged with the maintenance contractor's spare engines in order to keep the aircraft in operation during maintenance [112].

President Airlines entered into an agreement with petitioner for the maintenance of said aircraft, among others, on May 1, 1961. Paragraph VI of this agreement stated [107-108]:

> "IAS agrees to provide a spare QEC (That is an R2800-CB 16/17 or equivalent type engine with

accessories and demountable assembly) at each of the following locations: Oakland and Bradley. In addition thereto IAS agrees, upon request by Operator to make an additional QEC available for use by Operator in any area outside of the United States. . . . IAS agrees that as a spare QEC is installed on Operator's aircraft that it will replace such QEC at the location from which it was taken as soon as possible except that any QEC located outside the United States will be replaced at either Bradley or Oakland as above set forth. . . . Title to all spare QEC's and engine shall at all times remain in IAS and such title shall only be relinquished in writing by IAS. With respect to scheduled engine changes IAS will position a bare engine at Oakland or Bradley in advance of such scheduled engine change for build-up to QEC as quickly as possible after removal of the run-out engine.

Upon termination of this agreement, and for any reason, IAS engines are installed on the Operator's aircraft, Operator agrees to pay IAS in an amount equal to $6.50 times the engine operating hours accumulated on the IAS-owned engines from the termination date of this agreement until such time as the IAS engines are removed."

On June 6, 1961, respondents recorded a copy of their conditional sales agreement dated April 8, 1961, with the Federal Aviation Agency. President Airlines became the recorded owner of said aircraft on the same day through a certificate of registration with the Federal Aviation Agency on Form No. FAA-500 [Pre-Trial Conference Order Par. VII; Rep. Tr. p. 25].

Pursuant to its maintenance contract with President Airlines, petitioner installed two engines on said aircraft on August 2nd and September 13, 1961. Each engine had an agreed value of $23,000.00 [108-109]. Petitioner cancelled its maintenance agreement with President Airlines on September 27, 1961, and thereafter installed on said aircraft a third engine, valued at $23,000.00, and a QEC, valued at $15,000.00. This equipment was installed pursuant to a lease agreement between petitioner and President Airlines [109].

On November 7, 1961, petitioner notified respondents of petitioner's ownership of the three engines and demountable assembly installed on aircraft N-90771 [109]. Respondents also had been informed of this installation by petitioner's agent during October of 1961 [52]. Nevertheless, on November 7, 1961, respondents repossessed the aircraft, including the engines and demountable assembly, became recorded owners of said aircraft on December 6, 1961, and resold the aircraft, together with petitioner's engines and demountable assembly [93], on March 30, 1962, for the sum of $750,000.00 [110]. Said sale took place twenty-four days after petitioner had filed an action in the Superior Court of the State of California, County of Los Angeles, for the return of its engines and demountable assembly, and eighteen days after service on respondents of said action [110].

Petitioner did not record any document with the Federal Aviation Agency's Registry in Oklahoma City, Oklahoma, during its transaction with President, but

petitioner and respondents stipulated prior to trial that [111]:

> "The only recognized method of registering ownership of aircraft is with the Federal Aviation Agency through a certificate of registration on Form No. FAA-500 (Part A), which is carried in the aircraft and that there is no way of registering privately owned aircraft engines which are identifiable through their serial numbers."

At trial respondents did not contest plaintiff's ownership of the aircraft engines and demountable assembly prior to installation on aircraft No. N-90771 [100-102], and the parties further stipulated that "the document of ownership of privately owned aircraft engines are bills of sale, and plaintiff has the bills of sale for its three claimed engines in this matter" [111]. Respondents did maintain that through custom and usage in the aircraft industry title to engines attached to an aircraft followed the recorded title to the aircraft and, in the alternative, that petitioner had not been damaged because of respondents' actions since the engines in petitioner's possession after replacement were of equal value to the engines owned by petitioner (Resp. Br. pp. 5-7).

The trial court applied California law to the above facts and ruled in favor of respondents. This judgment was affirmed on appeal to the District Court of Appeal, Second Appellate District, State of California, on the new ground that petitioner's interest in the equipment had been destroyed by petitioner's failure to record pursuant to 49 U.S.C. §1403. Petitioner was denied a hearing by the California Supreme Court on July 26, 1967.

REASONS FOR GRANTING THE WRIT.

I.

The Decision of the District Court of Appeal Was in Error Since Maintenance Contracts Are Not Within the Scope of 49 U.S.C. Section 1403.

Petitioner does not question the constitutional right of the United States to enact legislation such as 49 U.S.C. §1403 or the fact that such legislation would preempt contrary state law on questions which fell within the scope of the section.[3] However, the right to own property is an inalienable right under the California Constitution[4] and petitioner has been deprived of his property, without compensation, through the operation of 49 U.S.C. §1403, as interpreted by the California District Court of Appeal. Before such a result is reached petitioner respectfully submits that this section of the federal code must be reviewed to determine if the business transaction described above indeed falls within the scope of the section.

Although the case law interpreting Section 1403 is extremely thin, petitioner contends that the United States Congress did not intend Section 1403 to include, and the language of that section does not include, temporary transfers of aircraft engines by their owner to the registered onwer of an aircraft pursuant to a maintenance contract. 49 U.S.C. §1403 was originally enacted as a part of the Civil Aeronautics Act of 1938.[5] the section did not provide for the recordation of in-

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[3]*United States v. United Aircraft Corp.* (D. Conn. 1948), 80 F. Supp. 2; *Continental Radio Co. v. Continental Bank & Trust Co.* (Tex. Civ. App. 1963), 369 S.W. 2d 359.

[4]Cal. Const., art. I, §1.

[5]Ch. 601, Title V, §503, 52 Stat. 1006 (1938).

dividual engines, which were not attached to any particular aircraft, and the Act was amended in 1948 to bring conveyances of aircraft engines within the scope of the recording provisions.[6] The purpose of the amendment was stated in House Report No. 2165:

> "This bill will facilitate the financing of new aircraft. Whenever new aircraft are purchased there must also be secured additional aircraft engines and spare parts to permit overhaul and replacement. The cost of these spares often amounts to twenty-five percent of the total purchase price.
>
> Under existing law, since a lien cannot be recorded on the separate engines and spare parts with the Civil Aeronautics Administrator, it is extremely difficult to finance a purchase by giving a mortgage or other lien on such engines and parts. This compels the purchaser to pay a greater percentage of the price in cash than would otherwise be necessary. This requirement for additional cash can be sufficient to deter the purchase of new aircraft. . . .
>
> Both the Congressional Aviation Policy Board and the President's Air Policy Commission recognized the desirability of facilitating the purchase of new aircraft by permitting greater use of secured financing. By extending the kinds of airline equipment on which liens may be given, this bill will help to achieve that end."[7]

The purpose of Section 1403 was to protect the security interests of financing institutions through recor-

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[6]Ch. 523 §3, 62 Stat. 494 (1948).

[7]H.R. Rep. No. 2165, 80th Cong., 2d Sess., in 2 U.S. Code Cong. & Ad. News 1896 (1948).

dation and invalidation of any prior, unrecorded interests in the security and any subsequent unrecorded conveyances of the security. This purpose was reaffirmed in 1959 when the provisions of the 1938 Act, as reenacted in 1958, were further amended to provide for the recordation of individual aircraft propellers.[8] House Report No. 445 paraphrased the earlier report and commented "it is logical that the production afforded by existing law to security owners of aircraft should be extended to include those having a separate security interest in propellers."[9]

Petitioner submits that Section 1403 is only concerned with the purchase, or equivalent long-term leasing, of aircraft engines and the protection of the security interest retained in the engines by the vendor. Neither the legislative history of the section nor the language of the section indicate that a short-term bailment was intended to be or is within the scope of that section. In the present case Atlas substituted its own engines on President's aircraft while it overhauled the replaced engines pursuant to its maintenance contract with President. The documents of title to the engines remained, and still remain, in Atlas. Atlas did not have a security interest in the spare engines, but in fact was the owner of the engines. Title to the engines was never transferred and President had no agreement with Atlas whereby title could be transferred. This business arrangement between petitioner and President represented an inexpensive alternative to the purchase by President of its own spare engines and parts under

[8]Act of 1938 repealed and re-enacted as Federal Aviation Act of 1958, 72 Stat. 731 (1958). 49 U.S.C. §1403 enacted Act of 1958, Title V, §503, 72 Stat. 773; propellers added Pub. L. 1959, §1, 73 Stat. 180.

[9]U.S. Code Cong. & Ad. News 1762 (1959).

some security arrangement with a third party. If President had followed the latter course its purchase would have fallen within the scope of Section 1403 and recordation by the third party would have been mandatory. But the former course, a maintenance agreement, transferred nothing except possession. In such a case petitioner submits that it did not require the protection of recordation, since it could not lose its ownership of the engines to a third party in any event, and that its business arrangement with President therefore does not fall within the scope of 49 U.S.C. §1403.

Aside from the theoretical problem concerning the intended scope of Section 1403, application of this section to the business transaction involved in the present suit raises a very practical problem: the nature of the document which should be recorded if Section 1403 controls. Petitioner submits that this difficulty itself indicates that Section 1403 is not applicable to such a business transaction. The maintenance agreement could not be recorded since it did not contain the engine numbers.[10] Although the record in the present action does not state what document accompanied the replacement engines, presumably some form of receipt was obtained by Atlas from President at the time the replacement engines were installed on the aircraft. However, such a document would certainly not be a "conveyance" under Section 1403(a)(1) since it would not effect "title to, or interest in, property," as defined in 49 U.S.C. §1301 (17). In addition, a receipt also would not constitute an "instrument executed for security purposes", as called for in 49 U.S.C. §1403(a)

[10]Engine number required by Administrator's 1961 regulation 14 C.F.R. §§ 501-505. Requirement retained in regulation as amended 14 C.F.R. §§ 49.41-.45 (1964).

(2). Such a paper undoubtedly would not be recordable under Section 1403 and, indeed, the parties stipulated in their Pre-Trial Conference Order that "there is no way of registering privately owned aircraft engines which are identifiable through their serial numbers" [111, Par. XII].

The core of this present case is that an aircraft maintenance agreement is essentially an aircraft owner's alternative to the expensive purchase of spare engines and parts under various financing arrangements. A lender who takes a security interest in an aircraft in return for his loan certainly needs protection and a guarantee that the equity in the aircraft is as represented. A lender needs protection against third party creditors who have advanced funds on the strength of the aircraft owner's presumed ownership of the equipment in his possession. In a transaction involving a short-term bailment the urgency of this protection is almost nonexistent. Maintenance agreements are not uncommon in the aircraft industry, as indicated by respondent's admission that it knew President would have to enter into such an agreement with someone in order "to keep its aircraft flying" [112]. Further, it is "common practice under all maintenance agreements to interchange engines" [112]. Petitioner does not believe that this expensive and common means of avoiding purchase of engines and spare parts should be hampered and perhaps destroyed by subjecting it to a recording system which was never intended to handle such a transaction, even assuming that the recording system could physically process the increase in docubents which must inevitably result from forcing maintenance agreements within the scope of Section 1403.

II.

Petitioner's Property Rights Should Not Be Destroyed Even if the Business Transaction Is Within the Scope of 49 U.S.C. Section 1403 (a)(2).

If petitioner's maintenance agreement, and the transfer of aircraft engines to President pursuant to that agreement, are within the scope of Section 1403(a)-(2), petitioner submits that this interpretation does not mean that its ownership rights in the aircraft engines must be automatically eliminated under Section 1403(c) because petitioner failed to record his ownership interests. Section 1403(c) does state that "no conveyance or instrument the recording of which is provided for by subsection (a) of this section shall be valid . . . against any person other than the person by whom the conveyance or other instrument is made or given." Petitioner contends, however, that this language cannot be blindly applied without reference to the factual context in which a given question arises and that the destruction of petitioner's property rights under Section 1403 constitutes an erroneous interpretation of the paragraph.

First, it would be impossible to destroy petitioner's ownership rights under Section 1403(c) if that paragraph is interpretated literally. The District Court of Appeal apparently assumed without further analysis that since the transfer from petitioner to President should have been recorded under 1403(a)(2) "its failure to record in Oklahoma City its ownership of the engines prior to repossession of the aircraft by Twentieth Century resulted in a subordination of its interest in the engines to the recorded interest of Twentieth Cen-

tury in the aircraft as a whole."[11] But Section 1403 (c) only states that an unrecorded instrument shall not be valid against a third person. Therefore, Section 1403(c) would only invalidate whatever document was executed at the time of engine installation to evidence the change of possession. The invalidation of this document would have no bearing whatsoever upon the documents of title in possession of petitioner and would leave the engine's ownership in petitioner. Section 1403(c) does *not* state that non-recordation of a recordable instrument shall destroy an entity's interest in the property involved. The paragraph only states that the document which should have been recorded is itself invalid. Such an invalidation in the present factual situation would leave ownership of the engines in petitioner and, as indicated by the first part of the lower court's opinion, would give petitioner certain rights against respondent under the doctrine of accession as applied in the State of California.

Second, the purpose underlying Section 1403 does not justify the rigorous interpretation given to that section by the District Court under the facts in the present case, even though the literal wording of the section might superficially apply to those facts. The history of Section 1403 indicates that the section was designed to protect a lender in basically two situations: lender loans money to purchaser and takes as security property "owned" by purchaser which in fact is owned or incumbered by a third party; lender loans money to purchaser in return for a purchase-money security interest and either a third party creditor subsequently attaches the purchased property or purchaser subse-

[11] 251 A.C.A. at 501.

quently sells the property to a bona fide purchaser. Depending upon the law of the given state the lender's security interest in the purchaser's property could be destroyed. Section 1403 effectively eliminates this possibility and, as stated in House Report No. 2165, facilitates the financing of spare equipment.

The above situations, the foundations of Section 1403, are simply not present in the case at bar. Respondents were not prejudiced in any manner by the maintenance transaction entered into between President and petitioner. Respondents knew that such a maintenance agreement would be necessary and that it was common practice in the industry to interchange engines under such an agreement [112]. It is true that President had agreed with respondents that President would not replace any equipment on the aircraft with equipment which was "subject to any lien or other mortgage, claim, charge or encumbrance" [Pltf. Ex. 11, Par. 10(c), p. 6], but such agreements cannot effect the interests of a third party when the conditional vendee actually replaces equipment with the third parties equipment in violation of the conditional vendee's contract.[12] Petitioner submits that Section 1403 was designed to protect respondents from the transfer of engines by President *to* petitioner, not from the transfer of engines to President *from* petitioner. The latter transaction was not prejudicial to respondents, respondents did not rely in any manner upon the transaction, and petitioner therefore does not believe that Section 1403 should be interpreted such that respondents are able to use it as a sword to destroy petitioner's ownership

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[12] *Goodrich Silvertown Stores v. Pratt Motor Co.* (1936), 198 Minn. 259; 68 A.L.R. 1242.

rights. If Section 1403 only provided that recordation placed all third parties on constructive notice of the recorded interest, there would be no question that respondents would be forced to prove additional facts creating an estoppel against petitioner in order to prevail.[13] Since respondents were unaffected by the transfer of aircraft engines to President by petitioner, petitioner contends that a similar showing of estoppel must be required under Section 1403 in order for respondents to prevail in this section.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted and it is further prayed by petitioner that this Honorable Supreme Court render its decision herein vacating the decision of the District Court of Appeal, Second Appellate District, State of California, dated May 31, 1967, and remanding this case to said District Court of Appeal for further proceedings not inconsistent with the opinion of this court.

Respectfully submitted,

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MERRITT G. SMALLEY,
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Counsel for Petitioner.

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[13] *D. Q. Service Corp. v. Security Loan & Discount Co.* (1930), 210 Cal. 327, 292 Pac. 497.

APPENDIX A.

Opinion of the Court of Appeal.

[Civ. No. 29739. Second Dist., Div. Two.

May 31, 1967.]

International Atlas Services, Inc., Plaintiff and Appellant, v. Twentieth Century Aircraft Company, Defendants and Respondents.

Appeal from a judgment of the Superior Court of Los Angeles County. Julian Beck, Judge. Affirmed.

Action for claim and delivery of three aircraft engines and one unit attached to an aircraft. Judgment for defendant repossessor as legal owner and conditional seller affirmed.

George O. West and Merritt G. Smalley for Plaintiff and Appellant.

Goldstein, Bernson & Wolfe and Harold B. Bernson for Defendants and Respondents.

FLEMING, *J.*—Atlas, a corporation in the business of repairing and maintaining aircraft engines, sued for claim and delivery of three aircraft engines and one QEC (quick engine change) unit attached to a DC-6B aircraft, No. 90771. From a judgment in favor of Twentieth Century, which had repossessed the aircraft as legal owner and conditional seller, Atlas appeals.

The controversy developed out of the sale of a four-engine DC-6B in 1961 by Twentieth Century to President Airlines under conditional sales contract. President Airlines, an operator of aircraft and not a party to this suit, employed Atlas to service and maintain the aircraft, the maintenance service to include scheduled

engine changes and engine overhauls. Both Atlas and Twentieth Century now claim ownership of engines installed in the aircraft by Atlas in the course of scheduled maintenance, engines which came into the possession of Twentieth Century when it repossessed the aircraft on President Airlines' default.

Under the 1961 conditional sale of the aircraft to President Airlines, monthly installments on the purchase price ran from $12,500 to $20,000, and legal title and ownership of the aircraft remained in Twentieth Century until full payment of the purchase price, $525,000 plus interest. Before delivery Twentieth Century affixed two plaques to the aircraft announcing its legal ownership of the airplane and the conditional nature of the interest of President Airlines. On June 6, 1961, President Airlines registered its ownership with the Federal Aviation Agency, and on the same day Twentieth Century recorded its conditional sales contract with the Aircraft Records Branch of the Federal Aviation Agency at Oklahoma City, Oklahoma. The contract of sale required President Airlines to keep the aircraft in good order and repair and to pay all expenses of maintenance and overhaul. With respect to replacement of equipment the contract provided: "Buyer [President] shall, at its own cost and expense, replace in or on said aircraft, any and all parts, equipment . . . or accessories which may be worn out . . . or otherwise rendered unfit for use . . . with other property which shall . . . be owned by Buyer free and clear of all liens and encumbrances. Buyer shall, at its own expense, perform all engine . . . overhaul and inspection and maintenance service on said aircraft . . . Buyer shall have the right to remove from said aircraft any

engine . . . or other article of equipment . . . which may have become unfit for use, but only if Buyer shall have substituted for the same another engine, . . . or other article of equipment which is owned by Buyer and is not at the time subject to any lien or other . . . claim, charge or encumbrance. . . ."

On taking possession of the aircraft President Airlines contract for maintenance with Atlas, which agreed among other services to make all engine changes and engine overhauls needed to keep N-90771 airworthy. The customary method of servicing engines in large aircraft is by engine substitution, sometimes including a QEC to support the engine. An engine which needs overhauling or whose time has run out is replaced by a newly overhauled engine with zero time, and the old engine in turn is completely overhauled and rebuilt. It then becomes an engine with zero time and thereafter may be installed in the same or other aircraft as the need for engine replacement arises. Aircraft engines bear serial numbers for identification, and their ownership may be recorded with the Aircraft Records Branch of the Federal Aviation Agency in Oklahoma City.

When President Airlines defaulted in its payments, Twentieth Century repossessed the aircraft, as it was entitled to do under its conditional sales contract. At the time of repossession the aircraft was equipped with three engines and a QEC which Atlas had installed in the ordinary course of scheduled maintenance and to which Atlas retained legal title. Atlas claimed ownership and the right to possession of these three engines, relying on the terms of its maintenance agreement with President Airlines, "Title to all spare QEC's and

engines shall at all times remain in IAS [Atlas] . . .". Issue was thus joined of priority of right between the legal owner of a component part and the legal owner of the principal property in which the component part had been installed.

Under California law in effect in 1961 this controversy would normally have been governed by the provisions of Civil Code section 1025 dealing with accessions to personal property: "When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him." Under this rule if the component part cannot be detached without severely diminishing the market value of the principal part, then the component part belongs to the owner of the principal part, who must, however, reimburse the owner of the component part for its value. Since aircraft cannot function without engines, the facts of the present case place it squarely within the provisions of this rule (*Sasia & Wallace, Inc. v. Scarborough Implement Co.*, 154 Cal. App.2d 308 [316 P.2d 39]; cf. *A. Meister & Sons v. Harrison*, 56 Cal.App. 679 [206 P. 106].) Following this rule we would be required to determine the value of the engines at the time of repossession and then decide whether that value should be compared with the value of the engines on the aircraft at the time of its sale to President Airlines or with the value of the run-out engines removed from the aircraft at the time of their replacement.

Were we to consider the rights of the parties under current California law, we would find the position of the owner of a component part in relation to the owner of the principal property even stronger than it had been under prior law, and we would be required to give full recognition to the continued separate ownership of the component part installed in the aircraft. Commercial Code, section 9314, reads: "(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section 'accessions') over the claims of all persons to the whole except as stated in subdivision (3) . . ." [Subdivision (3) has no application, since it relates to subsequent purchases and subsequent advances.] The official comment under section 9314 of the Uniform Commercial Code has this to say: "This Section changes prior law in that the secured party claiming an interest in a part (e.g., a new motor in an old car) is entitled to priority and has a right to remove even though under other rules of law the part now belongs to the whole."

It would appear, then, that under California law Atlas at a minimum should recover the value of its engines and at a maximum should recover the engines themselves. Nevertheless, we have concluded that California law does not apply to this case, that the controversy is governed by the laws of the United States, and that under federal law Twentieth Century must prevail. As we see it, general California law on the subject of title and liens to personal property in relation to component parts has been superseded by specific federal law with respect to aircraft. Section 503 of the Federal Aviation Act of 1958, derived from the Civil Aero-

nautics Act of 1938, provides for centralized registration and recordation of interest in aircraft with the Federal Aviation Agency. The pertinent provisions of the statute are found in 49 United States Code, section 1403:

"(a) The Administrator shall establish and maintain a system for the recording of each and all of the following:

"(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

"(2) Any *lease,* and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, *any specifically identified aircraft engine* [over 750 horsepower] . . . or any specifically identified aircraft propeller [capacity over 750 horsepower] . . .

"(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances . . . which instrument need only describe generally by types the engines, propellers, appliances, and spare parts covered thereby and designate the location or locations thereof; . . .

"(c) *No* conveyance or *instrument the recording of which is provided for by* [*subsection* (*a*) of this section] *shall be valid in respect of such aircraft,* aircraft engine or *engines,* propellers, appliances, or spare parts against any person other than the person by whom the conveyance or other instrument is made or given,

his heir or devisee, or any person having actual notice thereof, *until such conveyance or other instrument is filed for recordation* in the office of the Administrator: . . .

"(d) Each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation, except that an instrument recorded pursuant to [subsection (a) (3) of this section] shall be effective only with respect to those of such items which may from time to time be situated at the designated location or locations and only while so situated: *Provided,* That an instrument recorded under [subsection (a) (2) of this section] shall not be affected as to the engine or engines, or propeller or propellers, specifically identified therein, by an instrument theretofore or thereafter recorded pursuant to [subsection (a) (3) of this section]." (Italics added.)

It seems clear that Congress has recognized the extreme mobility of large aircraft for which neither state nor national boundaries can delineate or assure any fixed controls. Without some central system of recording ownership and other property interests in aircraft, security transactions involving aircraft engaged in continuous movement would amount to little more than attempts to control ownership of fish and game, which become objects of ownership only when taken. (Civ. Code, § 656.) To bring order into the field of aircraft ownership and finance, the federal government in a manner within its sphere set up a comprehensive scheme of centralized recordation, which, if properly used, pro-

vides adequate protection for all substantial property interests in large aircraft, both for the aircraft itself and for its principal component parts. Under section 1403(a)(1) a security interest in the aircraft as a whole can be recorded. Under section 1403(a)(2) an interest in its specific engines and propellers can be recorded. A conveyance, lease, or security instrument recorded under section 1403(a) is fully valid against all persons from the time of its filing without further or other recordation. Under section 1403(c) a conveyance or instrument which could have been recorded but was not, is, until so recorded, invalid against a person without actual notice of the conveyance or instrument. The section also provides for bulk registration of engines, propellers, and spare parts (§ 1403(a)(3)), but it is careful to subordinate this bulk registration to the specific registration of particular property under subsection (a)(2) (i.e., engines and propellers).

Here we have a complete and comprehensive system of recordation which necessarily supersedes inconsistent state law. Constitutionally, the federal government may be said to have fully occupied the field of recordation of interests in aircraft and of rights derived from recordation, and to have established paramount law in this area. Atlas could have fully protected its rights in these engines and preserved a good title throughout the world by taking advantage of this national system of recordation and recording its interest in specifically numbered aircraft engines with the Federal Aviation Agency. Its failure to record in Oklahoma City its ownership of the engines prior to repossession of the aircraft by Twentieth Century resulted in the subordination of its interest in the engines to the recorded interest of Twentieth Century in the aircraft

as a whole. The latter, by recording with the Federal Aviation Authority, established a superior right to the aircraft, its engines, and its propellers, effective against all other interests in the aircraft except known or recorded adverse interests. This paramount interest under federal law effectively superseded any inconsistent interest derived from state law.

On federal preemption as overriding state law in this field, we find persuasive *United States v. United Aircraft Corp.*, 80 F.Supp. 52. In that case the United States, as a mortgagee, had recorded under federal law a purchase money chattel mortgage on a particular aircraft. Later United Aircraft, to whom the engines from the aircraft had been delivered by the mortgagor for overhaul, asserted an artificer's lien against the engines under Connecticut law. The court declared that Congress had preempted the field of liens on aircraft and that federal law was controlling. In the particular case, however, the artificer's lien was upheld because of the insufficiency of the notice to third parties of the mortgagee's lien—only the number of the aircraft itself having been recorded and not the serial numbers of its individual engines. Since the time of this decision the gap which then existed in the law has been closed, and federal law now authorizes the recording of specifically numbered engines. *Crescent City Aviation, Inc. v. Beverly Bank* (1966)—Ind.App.—[219 N.E. 2d 446].)

To avoid the impact of the recordation statute, Atlas argues that the provisions of the law are limited to the recordation of security interests; that its installation of engines in N-90771 was only a loan of personal property which did not fall within the classification of a transaction executed for security purposes. We think this

argument is sufficiently answered by the test of the statute itself, section 1403 (a)(2), which specifically applies to "Any lease" [and any mortgage or other security instrument] "which lease or other instrument affects the title to, or any interest in, any specifically identified aircraft engine . . ." The term lease is broad enough to include a bailment of personal property, and the statute clearly applies. (*Carstensen v. Gottesburen*, 215 Cal. 258 [9 P.2d 831].)

Finally, Atlas argues that since there was no testimony to prove that section 1403(a)(2) had ever been used to record interests in aircraft engines we must assume it was a custom of the industry not to use the statute for that purpose. The assumption does not follow from the premises and is contradicted by the congressional committee report on the subject, 1959 U.S. Code Congressional News, pp. 1762, 1764. Nor does it follow from the proof in this very case, for the record reflects that Bank of America, a prior lienholder recognized as such by all parties, had recorded with the Federal Aviation Agency a security interest in the plane and in specified aircraft engines identified by number, a paramount interest which no one saw fit to challenge.

We conclude that the failure of Atlas to record its interest in the airplane engines installed in an aircraft to which Twentieth Century held legal title, which title the latter had properly recorded under federal law, subordinated its interest in the engines at the time of repossession to the interest of Twentieth Century in the aircraft as a whole.

Judgment affirmed.

Roth, *P. J.*, and Herndon, *J.*, concurred.

APPENDIX B.

§ 1403. Recordation of Aircraft Ownership—Establishment of Recording System.

a) The Administrator shall establish and maintain a system for the recording of each and all of the following:

(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

(2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any specifically identified aircraft engine or engines of seven hundred and fifty or more rated takeoff horsepower for each such engine or the equivalent of such horsepower, or any specifically identified aircraft propeller capable of absorbing seven hundred and fifty or more related takeoff shaft horsepower, and also any assignment or amendment thereof or supplement thereto;

(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances maintained by or on behalf of an air carrier certificated under section 1424(b) of this title for installation or use in aircraft, aircraft engines, or propellers, or any spare parts maintained by or on behalf of such an air carrier, which instrument need only describe generally by types the engines, propellers, appliances, and spare parts covered

thereby and designate the location or locations thereof; and also any assignment or amendment thereof or supplement thereto.

Recording of Releases, Cancellations, Discharges or Satisfactions.

(b) The Administrator shall also record under the system provided for in subsection (a) of this section any release, cancellation, discharge, or satisfaction relating to any conveyance or other instrument recorded under said system.

Validity of Conveyances or Other Instruments; Filing

(c) No conveyance or instrument the recording of which is provided for by subsection (a) of this section shall be valid in respect of such aircraft, aircraft engine or engines, propellers, appliances, or spare parts against any person other than the person by whom the conveyance or other instrument is made or given, his heir or devisee, or any person having actual notice thereof, until such conveyance or other instrument is filed for recordation in the office of the Administrator: *Provided,* That previous recording of any conveyance or instrument with the Administrator of the Civil Aeronautics Administration under the provisions of the Civil Aeronautics Act of 1938 shall have the same force and effect as though recorded as provided herein; and conveyances, the recording of which is provided for by subsection (a) (1) of this section made on or before August 21, 1938, and instruments, the recording of which is provided for by subsections (a) (2) and (a)

(3) of this section made on or before June 19, 1948, shall not be subject to the provisions of this subsection.

Effect of Recording.

(d) Each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation, except that an instrument recorded pursuant to subsection (a) (3) of this section shall be effective only with respect to those of such items which may from time to time be situated at the designated location or locations and only while so situated: *Provided,* That an instrument recorded under subsection (a) (2) of this section shall not be affected as to the engine or engines, or propeller or propellers, specifically identified therein, by any instrument theretofore or thereafter recorded pursuant to subsection (a) (3) of this section.

Form of Conveyances or Other Instruments.

(e) Except as the Administrator may by regulation prescribe, no conveyance or other instrument shall be recorded unless it shall have been acknowledged before a notary public or other officer authorized by the law of the United States, or of a State, territory, or possession thereof, or the District of Columbia, to take acknowledgment of deeds. As amended Pub.L. 88-346, §2, June 30, 1964, 78 Stat. 236.

Index of Conveyances and Other Instruments.

(f) The Administrator shall keep a record of the time and date of the filing of conveyances and other instruments with him and of the time and date of recordation thereof. He shall record conveyances and other instruments filed with him in the order of their reception, in files to be kept for that purpose, and indexed according to—

(1) the identifying description of the aircraft, aircraft engine, or propeller, or in the case of an instrument referred to in subsection (a) (3) of this section, the location or locations specified therein, and

(2) the names of the parties to the conveyance or other instrument.

Regulations.

(g) The Administrator is authorized to provide by regulation for the endorsement upon certificates of registration, or aircraft certificates, of information with respect to the ownership of the aircraft for which each certificate is issued, the recording of discharges and satisfactions of recorded instruments, and other transactions affecting title to or interest in aircraft, aircraft engines, propellers, appliances, or parts, and for such other records, proceedings, and details as may be necessary to facilitate the determination of the rights of parties dealing with civil aircraft of the United States, aircraft engines, propellers, appliances, or parts.

Previously Unrecorded Ownership of Aircraft.

(h) The person applying for the issuance or renewal of an airworthiness certificate for an aircraft with respect to which there has been no recordation of ownership as provided in this section shall present with his application such information with respect to the ownership of the aircraft as the Administrator shall deem necessary to show the persons who are holders of property interests in such aircraft and the nature and extent of such interests. Pub.L. 85-726, Title V, § 503, Aug. 23, 1958, 72 Stat. 772; Pub.L. 86-81, §§ 1, 3, 4, July 8, 1959, 73 Stat. 180, 181.

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IN THE

Supreme Court of the United States

October Term, 1967
No. 761

INTERNATIONAL ATLAS SERVICES, INC., a Division of ATLAS CORPORATION, formerly known as INTERNATIONAL AIRCRAFT SERVICES, INC., a Delaware Corporation,

Petitioner,

vs.

TWENTIETH CENTURY AIRCRAFT COMPANY, a partnership; J. B. LEWIN, S. WEISS, R. R. HART and J. FISCHGRUND, individually and as partners doing business as TWENTIETH CENTURY AIRCRAFT COMPANY,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondents, with the exceptions and additions hereinafter noted, adopt the Statement of the case set forth in petitioners Petition for a Writ of Certiorari filed herein.

The trial court found:

"That it is true that the plaintiff, on or after June 6, 1961, had constructive knowledge of the conditional sales agreement, dated April 8, 1961, in which defendants were the conditional vendors of the aircraft N-90771 and President Airlines, Inc., a Delaware corporation

were conditional vendees and all the terms and conditions thereof" (15 b);[1]

"That it is true that prior to June 6, 1961 and before May 1, 1961, plaintiff had actual knowledge that President Airlines was the vendee of said Aircraft N-90771 pursuant to conditional sales agreement and that defendants were the vendors pursuant to the conditional sales agreement" (15 b);

"That it is true that none of the three engines claimed by plaintiff were installed on said aircraft N-90771 prior to June 6, 1961" (15 b)

The conditional sales agreement referred to was admitted into evidence as Plaintiff's Exhibit No. 11. (R.T. 66)

The conditional sales agreement Plaintiff's Exhibit No. 11.) provided, among other things, as follows:

"Until happening of an event of default as specified herein, Buyer shall have the right to remove from said aircraft any engine, accessory, or other article of equipment covered hereby which may have become unfit for use, but only if Buyer shall have substituted for the same another engine, accessory or other article of equipment which is owned by Buyer and is not at the time subject to any lien or other mortgage, claim, charge or incumbrance and is of the type, kind and character as the engine, accessory or other article of equipment

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[1] Unless otherwise indicated numbers in parentheses refer to pages in Clerk's Transcript. Reporter's Transcript references are designated R.T.

replaced and has a value and utility at least equal to that of said engine, accessory or other article of equipment so removed if the latter were in a useable condition."

Further, insofar as petitioner's Statement of the Case implies wrong doing of some unspecified sort by respondents, the findings of fact made by the trial court expressly negate that inference. No demand was made by petitioners for the return of any engines until after respondents had repossessed the aircraft pursuant to the terms of the conditional sales agreement with the vendee.

The court found:

"That it is true that the plaintiff demanded possession of said three aircraft engines together with the demountable assembly prior to the commencement of this action; that said demand was made on November 7, 1961, at or about the time the defendants had repossessed said aircraft N-90771 pursuant to the terms of its conditional sales agreement with President Airlines." (15 a)

"It is not true that the defendants unlawfully obtained or retained possession of the said personal property. It is not true that the value of said personal property claimed by plaintiff was Eighty Four Thousand Dollars ($84,000.00) on November 7, 1961" (15 b)

The Statement of the Case is also misleading insofar as it implies that the respondents' position that 49 U.S.C. Section 140 V, controlled the factual situation was a

new ground somehow imposed upon petitioner by the District Court of Appeal.

The Trial Brief filed with the court by respondents at the time of the trial contained the following:

"The Federal Government pre-empted the field of conveyancing interest in aircraft. The State Courts have not questioned the rights of the Federal Government to do so. (Citations omitted) 49 U.S.C. A § 1403 sets forth the direction of Congress in this matter. The pertinent provisions read as follows: (Text omitted)"

In the opening statement at the time of trial, respondents stated, among other things, "primarily, our position is as set forth in our Trial Brief, and it is this: That in dealing with aircraft, we are dealing with the Federal Law, which has pre-empted the field, and we need look no further than the statutes, the pertinent parts of which, I believe, were set out previously." (R.T. l. 26 p. 379 l. 5 p. 380)

The Trial Court also indicated in its informal opinion rendered from the bench that the provisions of 49 U.S.C. 1403 were controlling. (R.T. 603-605)

ARGUMENT

I

Petition should be denied because of lack of jurisdiction under 28 U.S.C. §1257 (3)

Petitioner's admission found on page 8 of its Petition herein that "Petitioner does not question the constitutional right of the United States to enact legisla-

tion such as 49 U.S.C. § 1403 or the fact that such legislation would pre-empt contrary state laws and questions which fell within the scope of said action.", disposes of the Petition herein for a Writ of Certiorari to the Court of Appeal for the Second Appellate District of the State of California. By this admission petitioner has effectively removed itself from the provisions of 28 U.S.C. 1257 (3) by conceding that no claim is being made by petitioner that there is a question of the validity of a state statute on the ground of its being repugnant to the Constitution or laws of the United States.

II

There is no question that the United States Government under the Commerce Clause of the United States Constitution, has the right to regulate commercial aviation and that such legislation does pre-empt state laws in the field. When the question has arisen the reported decisions of all courts where the question has been presented have upheld the paramount power of the Federal Government and the authority of 49 U.S.C. § 1403 and the regulations of the Civil Aeronautics Administration adopted pursuant thereto.[2]

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[2] 15 Federal Register 9442

United States vs. United Aircraft Corp. (D. Conn. 1948) 80 F. Supp. 2; Continental Radio Co. vs. Continental Bank & Trust Co. Tex. Civ. App. 1963), 369 S.W. 2d 359; In re Veterans Air Express, Inc. 76 Fed. Supp. 684; Kerley Chemical Company vs. Colbach 145 Cal.App.2d 509; Crescent City Aviation, Inc. vs. Beverly Bank (1966-*Ind. App.*), N.E. 2d 446

California law in effect at the time of the transaction herein recognized that the laws of the State of California insofar as mortgages of aircraft or parts of aircraft were concerned were subject to the paramount authority of the provisions of the laws of the United States governing the same.[3]

Petitioner's position, if it is a position, that it has an unlimited, unrestricted, right to contract with respect to its property, even if such right infringes upon the right of others is not well-founded. Without burdening this Honorable Court with citations, it is submitted that this premise is contradicted by well-recognized principles in the fields of mechanics and materialmen liens, mortgages and conditional sales. The implication 49 U.S.C. § 1403 and the provisions thereof relating to the effect of recording or non-recording of conveyances or instruments affecting aircraft and aircraft engines somehow violates the due process provisions of the United States Constitution is not well-taken. Petitioner's failure to record under federal law resulted in the subordination of its interest in certain aircraft engines. This failure to follow the established federal laws cannot be the subject of a claim that due process has not been accorded to petitioner.

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[3] California Civil Code §2958 (a)

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California should not be granted.

Respectfully submitted,

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